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July 29, 2004

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TWB-204
Washington, D.C. 20554

RE: NOTICE OF EX-PARTE COMMUNICATION

In the Matter of Section 272(f)(1) Sunset of BOC Separate Affiliate and Related Requirements, WC Docket No. 02-112; In the Matter of Performance Metrics and Standards for Interstate Special Access Services, CC Docket No. 01-321.

Dear Ms. Dortch:

During a recent *ex parte* meeting, the Wireline Competition Bureau (WCB) staff requested SBC to comment upon BellSouth's proposed performance measurements for special access services and explain how SBC's current section 272(e)(1) reporting differs from BellSouth's proposed metrics.

Before commenting upon BellSouth's proposal, SBC must reiterate its view that performance measurements for special access services are unnecessary and counterproductive because of robust competition in the market for special access. But, if the Commission nevertheless determines that some measures are appropriate to implement section 272(e)(1), it should narrowly tailor those measures to the requirements of that section and ensure that such measures are no more burdensome than necessary. Specifically, it should focus only on those products and services relevant to competition in the long distance market, and assess compliance under the statutory non-discrimination standard in section 272(e)(1). In addition, because the Bell Operating Companies (BOCs) have not deployed uniform processes and systems, the Commission should identify the general parameters of any uniform metrics, and permit each BOC to develop company-specific PM plans to implement those metrics.¹

SBC believes that BellSouth's proposed metrics meet these criteria, and therefore generally would support BellSouth's proposal if the Commission adopts special access performance metrics. BellSouth's proposed metrics generally are preferable to SBC's

¹ The Commission should delegate authority to the Wireline Competition Bureau to review and approve such plans.

existing 272(e)(1) reporting plan because its metrics are more straight forward, easily implemented, and at least as effective in evaluating parity as SBC's metrics (the attached chart compares BellSouth's proposed metrics with SBC's current plan).² Nevertheless, certain modifications to BellSouth's proposal are necessary.

First, the Commission should not include BOC retail end-user customers in any parity metrics adopted pursuant to section 272(e)(1). As the Commission previously has acknowledged, that section requires a BOC to fulfill "equivalent requests" from unaffiliated entities as quickly as it fulfills requests from itself or its own affiliates.³ The Commission further has recognized that, determining whether requests are "equivalent" requires an assessment of whether orders for service utilize comparable processes, are of similar size and complexity, and are for similar locations.⁴ Thus, insofar as customer order processes or order types differ, order performance cannot be compared to assess parity.

SBC has developed very different ordering processes to accommodate the distinct needs of its retail and wholesale customers, rendering meaningless any comparison of performance between wholesale and retail. For example, although retail customers generally know the communications needs of their businesses, they may not know which specific communications service will best meet their needs. In contrast, wholesale customers, such as carriers, generally are better informed; more sophisticated, and know which specific communications services they require. Retail customers also order services in much smaller volumes than wholesale customers, and thus do not need

² The genesis of SBC's current section 272(e)(1) reporting was SBC's commitment in its section 271 applications to track and maintain the information disclosures proposed by the FCC in the FNPRM issued concurrently with its *Non-Accounting Safeguards Order* in CC Docket No. 96-149. This reflected the best alternative available at the time to demonstrate compliance with section 272(e)(1) of the Act absent final FCC implementing rules.

³ *Nonaccounting Safeguards Order* at para. 240. The reference in paragraph 240 and section 272(e)(1) to the BOC "itself" was not intended generally to require a comparison of telephone exchange and exchange access services provided to retail end users with service provided to non-affiliates. Rather, as the language and structure of that provision make clear, it was intended to ensure that a BOC provides such services to its long distance operation on the same terms and conditions as it provides to unaffiliated providers of long distance services when and if the BOC integrates its long distance operations into its operating companies. First, section 272(e)(1) requires a BOC to fulfill requests for telephone exchange and exchange access services from unaffiliated carriers as quickly as it fulfills such requests from its affiliates or itself; it makes no reference to retail end users. When a BOC provides service to end users it does not in any sense provide anything to itself. Second, section 272(e) is the only provision in section 272 that does not sunset, and thus it continues to apply after a BOC is permitted to fold its interLATA long distance operations back into the telephone company. Section 272(e)(1) thus naturally applies to the BOC itself to ensure that once the BOC provides long distance services itself, it does not discriminate in favor of its long distance operations. This reading of section 272(e)(1) also is constituent with the overall purpose of section 272, which is to ensure that when a BOC receives authorization to provide interLATA long distance services, it does not discriminate in favor of its own long distance operations. Section 272(e)(1) thus does not support inclusion of retail end users in any parity metrics.

⁴ *Id.*

sophisticated or automated ordering processes, but do require greater interaction and assistance throughout the ordering process.

To meet the needs of retail customers, SBC has established business offices and account teams that specialize in the needs of these customers. These business offices and account teams engage in a dialogue with retail customers to determine their communications needs and identify the right services to meet those needs. The business offices and account teams manually take retail customers' orders, and submit them to SBC's business service center (BSC) for provisioning. The BSC then generates electronic orders, which go through the same provisioning process as wholesale services.

In contrast, while SBC also has established account teams and service centers to support wholesale customers, it has established robust, automated systems to accommodate the special needs of wholesale customers. These customers purchase special access circuits in bulk and across wide areas to provide service to end users. At the request of these customers, SBC has established mechanized access service request (ASR) processes that allow carriers electronically to submit bulk orders for high capacity circuits to SBC's access service center (ASC), which is dedicated exclusively to serving wholesale customers. These orders generally flow directly through SBC's ordering systems into its provisioning systems, at which point they enter the same queue and are provisioned in the same manner as retail services. While SBC's wholesale customers could use the same ordering processes as SBC's retail customers if they so chose, doing so would significantly slow down the ordering processes. Because SBC's wholesale customers purchase special access services using very different ordering processes from retail customers, orders from retail end users are in no sense "equivalent" to those submitted by unaffiliated carriers (or, for that matter, by SBC affiliates), and thus cannot be used to assess parity in performance. Consequently, any special access performance metrics adopted pursuant to section 272(e)(1) should exclude retail end users.

Second, the Commission should not include Feature Group D or Switched Access services in any parity metrics adopted pursuant to section 272(e)(1). The BOCs and other ILECs have been providing Feature Group D and Switched Access services for years using standard, automated procedures that allow customers to switch providers easily and without service disruption. In addition, the BOCs participate in the CARE system, which provides transparent access to, and information on, PIC change requests, and already report on switched access in ARMIS service quality reports. As a consequence, there is no demonstrated regulatory need to add another layer of reporting for Feature Group D and Switched Access services.

Third, the Commission should not adopt a Customer Desired Due Date (CDDD) metric because CDDD cannot be updated for performance measurement purposes when a customer submits order modifications that affect the due date. The CDDD represents the initial due date requested by a customer and not necessarily the due date actually accepted by the BOC. To the extent the Commission determines that a metric to measure on-time delivery is appropriate, it should adopt a Due Date Objective (DDOBJ) or

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promised delivery date metric. Because a DDOBJ or comparable metric could be modified based on subsequent order activity that affects the due date, it would provide a more accurate test of on-time delivery.

Fourth, the Commission should not require BOCs to report on the percentage of requests receiving either a FOC or a reject. Orders may be rejected for various reasons, most, if not all, of which are due to customer error in completing the ASR. As a consequence, the percentage of orders rejected says nothing about the quality of BOC performance.

Finally, while implementing BellSouth's proposed metrics would be fairly straightforward, it would require significant changes to SBC's current reporting structure and systems. SBC estimates that it would take at least 6 months to implement those changes and test its systems to ensure that they produce data necessary to ensure valid and meaningful comparisons.

If the Commission determines that some measures are appropriate to implement section 272(e)(1), it should adopt BellSouth's proposed metrics with the modifications discussed above.

In accordance with section 1.1206 of the Commission's rules, this letter is being filed in the above referenced proceeding via the Commission's ECFS system. Should you have any questions regarding the attached, please do not hesitate to contact me at (202) 326-8919.

Sincerely,

A handwritten signature in purple ink, appearing to read "mthomas".

Michelle A. Thomas

ENCLOSURES

cc: Michael Carowitz
Ben Childers
William Cox
William Dever
Kimberly Jackson
William Kehoe
Brad Koerner
Pamela Megna
Julie Veach

ATTACHMENT A

BS Measure	Definition	Feasible	Compared to SBC 272(e)(1) Reporting	Other Comments
FOCT2	(1) % of FOCs returned within standard interval (2) % of requests receiving a FOC or reject	(1) Yes (2) Yes	(1) More straightforward than current SBC measure (SC3) (2) SBC does not report today	(1) None (2) Does not measure BOC performance, but rather customer ability to submit valid order (good ASR)
PIAM2	% of installation commitments completed on/before the current committed due date	Yes	More straightforward than current SBC measures (SC1 and SC2)	Business rules should include customer caused misses in the numerator and denominator; BOCs should receive credit for being ready on-time even if the customer is not
NITR2	Rate of trouble reports on new circuits within 5 calendar days of the installation	Yes	Straightforward; SBC does not report today	SBC tracks today for internal purposes, but using 30 days; Business rules should include customer reported troubles and exclude cases of “no trouble found” and where no trouble is tested in SBC’s network (referred to as NTF and TOK); Business rules should exclude customer caused troubles
PIC2	Average interval of time between date/time the PIC change request is received and the date/time the PIC change is completed	Yes	More straightforward than current SBC measure (SC4);	Average interval measure may more likely be skewed due to unusual and/or one-time occurrences (e.g., switch problem); Need to assess live data to determine if average interval or % complete within standard interval (SBC = 24 hours) provides more meaningful comparison
CTTR2	% of initial and repeated circuit specific trouble reports completed per 100 in-service circuits for the reporting period	Yes	Straightforward; SBC does not report today	Business rules should only include customer reported troubles and should exclude TOK and NTF troubles discussed above
MAD2	Average interval of time a trouble condition exists on an access line	Yes	More straightforward than current SBC measures (SC5 and SC7)	Business rules should include all measured customer reported trouble categories, and exclude time periods in which SBC is denied access to a circuit either physically or virtually